App. F. IX-4

Previous References
J-S 37-33-1-~~38~~

193 4
(Com)

File No. 202-3
Serial Nos. 1-2

Letter References.

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 2

Part B for April 1936

SUBJECT.

Action against- messrs Deen & Co, Be
to prevent them from using the
word "Mysore" in connection with
their Soaps ~~preparations~~ manufactured by

Sl-2 To The Director of Ind & Commerce
in Mysore
No P-65-98 dy 4.4.36

WD/03607—GPB—22,500—2-8-35

States that action similar to the
taken against "Elephant Soap Works"
may be taken.

Telegraphic Address:—"INDUSCOM."

GOVERNMENT OF MYSORE.

DEPARTMENT OF INDUSTRIES AND COMMERCE.

In reply please refer to
No. D2-154/34-35.
Encl. One Soap wrapper

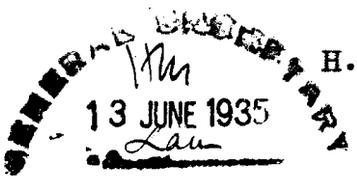
OFFICE OF THE DIRECTOR,

Dated Bangalore, 10th June 1935.

Law 202-34-1

FROM S. Abdul Wajid, Esq., B.A.,
~~AxxYxxRAMAANNXRHAN,xxEsq,xxxx~~
Director of Industries and Commerce in Mysore,
Bangalore (India).

To



H.V. Ramasvami, Esq., M.A., B.L.,
General Secretary to the Government of Mysore,
(Law Branch), Bangalore.

SIR,

Early reply 14/6

I have the honour to state that the Government Soap Factory has been using the word "Mysore" in connection with the products manufactured by it, as "Mysore Sandal Soap", "Mysore Washing Soap' etc. Messrs. Deen & Co., Bangalore City, who have been manufacturing soaps have also been using the word "Mysore" in connection with their preparations as "Mysore Herbal Soap". The use of the word "Mysore" by this firm is likely to mislead the consuming public.

I request that I may be kindly informed as to whether there is any copyright in the word "Mysore" and whether we may take acti against Messrs. Deen & Co., to prevent them from using the word "Mysore" in connection with their preparations.

One of the soap wrappers of the firm is sent herein enclosed for favour of reference.

Purely Manufactured from Herbs & free from animal fat.

Best for Washing, and bathing purposes.

Use our Deep Foam Be

The use of the word 'Mysore Herbal Soap by Messrs Deccan Cannot be said to be false trade mark as defined in sec 480 I.P.C and sec 9 of the Maitland Mark Regn Act of 1952, since it Cannot be said that in the mind of the reasonable belief that it is a manufacture of Mysore Soap factory so Cognizable Exists in the use of the word Mysore as suggested by the Dist no action therefore seems possible

ISD
19/6

The use of the word 'mysore' in connection with the Herbal soap may not amount to an offence under the I.P.C But still it may amount to an actionable wrong for which a suit for injunction and damages may lie - In such cases, as explained in the Hon'ble Justice Mulla's decision in 1923 Bom 119, the principle on which a right of action is given in such matters is not that there is property in the word, but that it is a fraud on a person who has established a trade and carries it on under a given name that some other person should assume the same name or the same name with a slight alteration in such a way as to induce persons to deal with him in the belief that they are dealing with the person who has given reputation to the name. The same principle applies in what are known as

"passing off" cases. In such cases, there is a common law right of action which entitles a trader or manufacturer to an injunction restraining the use of a trade mark or trade name belonging to him if such use is calculated to pass off the defendants' goods as the goods of the plaintiff. (1926 Bom 200).

To decide if there has been an infringement, in this case one has to look not only to the resemblance between the two names but also as to the get up as a whole, and while not disregarding the parts which are common to the trade must try to find out whether a case has been made out showing that ~~the defendants~~ Messrs Deen's goods are like the Govt Soap Factory's Soaps by reason of something peculiar to the latter. A mere examination of the Soap wrappers is therefore not conclusive. A packet exactly of mysore Herbal Soap has to be examined with a Smith one of the Govt factory and further action

General and Revenue Secretariat. | Law File No. | of 193 4. | [App. F. III-2

D.O.No.P 1/35 dated 2-7-35

Forwarded with Compliments to the Director of I&C for favour of remarks.

B.O

OFFICE OF DIRECTOR. I. & C. 1235 No. DATE 3-7-35

Mysore Herbal Soap

Dy Secretary

D.O.No. 1/35-36

Returned with compliments

The whole objection is to the association of the word "Mysore" with products of a Soap Factory. The public belief is that if the word "Mysore" is associated with a soap or other Cosmetic article, it is a product of the Govt. Soap Factory. Therefore "Mysore Herbal Soap" will be mistaken by the buying public to be a product of our Factory and hence our apprehensions.

The Soap and the wrapper of the Mysore Herbal soap have no resemblance to those used by the Government Soap Factory.

For Director,
Absent from Hdqrs on Deptn

4th July 35

Returned with compliments.

The question is whether the name 'Mysore Herbal Soap' so closely resembles the name of the soaps manufactured by the Government Factory, whic have been in the market for many years, so as to mislead unwary buyers into the belief that the former are soaps manufactured by the Government Factory; and, whether the name 'Mysore Soap' has acquired such a reputation in the market as to be associated only with the soaps manufactured by the Government Soap Factory. It is assumed, that the Government Factory is not manufacturing soaps call 'Mysore Herbal Soaps'.

A similar question was considered by me recently in connection with the file re: Mysore Insurance Company, and I have discussed therein exhaustively the points arising in the case That opinion may also be considered in this connection.

A decision in A.I.R. 1932 Madras pp.705 may also be perused with advantage in considering this question. That was a case in which the Plaintiff was selling his goods by the name of 'Madras Curry Powder'. The Defendant also began selling in England what he called "Madras Curry Powder". It was held that it was necessary for the Appellants, that is, the Plaintiffs, to prove that the Madras Curry Powder which is merely descriptive of the kind of powder and the place of its manufacture has acquired a secondary meaning and has come to mean curry powder manufactured by themselves and not by other manufacturers.

It could, no doubt, be urged that, as the Government Factory was among the earliest to manufacture soaps which successfully competed with foreign soaps and called their soaps "Mysore Soaps" these words have acquired a secondary meaning and that they are understood to indicate that they are soaps manufactured by the Government Factory. This depends upon the evidence that can be adduced in the case and the Superintendent of the Soap Factory may be able to say whether such evidence is available Unless that can be successfully proved, the chances of success are not many, particularly because 'Mysore may be considered to be descriptive of the place where the soap is manufactured.

It has been also mentioned that the get-up and the wrappers have no sort of resemblance to those of the Government Factory. It is not also clear as I have stated above whether the Government Factory manufactures soaps called 'Mysore Herbal Soaps'.

The question may, therefore, be decided after ascertaining from the Superintendent of the Soap Factory whether he could establish by positive evidence that the Mysore soaps have acquired a secondary meaning as laid down in the decision above referred to.

The same principles were recently enunciated by the Mysore High Court in a Trade Mark Case relating to 'Amrutanjan' manufactured by Mr. Nageswara Rao Pantulu of Madras.

The matter may therefore be considered in the light of what I have stated above.

M. Magashula

Government Advocate.

CSN/10.9.35

Forwarded with Compliments
to the Director of Industries &
Commerce for note & return

B Yesodhara
3/10/45

Returned with compliments.

The name "Mysore" used in connection with the soaps of the Government Soap Factory has not been registered in the books of the Mysore Chamber of Commerce. The Soap Factory has, however, established a trade and has been carrying on business by using the word "Mysore" in connection with its products ever since the Factory was started. The use of the word "Mysore" by Messrs. Deen and Co in connection with their products may affect the busi-ness of the Soap Factory.

The Elephant Soap Works, Mysore, were using th word "Mysore" in connection with their product for some time in 1935 and when it was pointed out to th that there was an infringement of trade name, the firm undertook not to use this word. This is the only proof that we can produce.

The Government Soap Factory does not produce any soaps called ~~by~~ the ~~name~~ "Mysore Herbal Soaps".

4th March 1936

Director of Industries
Commerce in Mysore.

The Dir^r may be requested to take similar action as in the case of Elephant Soap works, Mysore and write to the manufacturers of Mysore Herbal Soap pointing out to them infringement of trade name.

W.O. No. 1618 13-3-36

Govt advocate with compliments for favour of advice as to the further action to be taken to safeguard the business interests of the Mysore Govt Soap factory in the matter.

M Yoganarasimhan
12/3/36.

Returned with Compliments.

Action may be taken as suggested at 'B' above. The director may also mention in his letter that the Elephant Soap Works dropped the use of the word 'Mysore' in connection with their products, when it was pointed out to them by the Govt that it was an infringement of their trade name.

Serial No.

Dft sub[d]
TSD 25/3

For approval
Gen Secy) 29/3
Rev Secy) 29.3.

25/3
28/3

Issue
30/3

To,

The Dep[t] of Ind[s]

no. P. 6595 d 4.4.36 instructing to take
similar action as in the case of Elephant
Soap works.

M. S. L. I.
O. 20.

MYSORE STATE LIFE INSURANCE OFFICE. 65

In reply please quote—
No. 2485
Encl. .....

BANGALORE,
Dated, the 7th August *1934.*

FROM

A.N. RAGHAVA CHAR, Esq., M.A.,
~~M.XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ Esq., M.A.,
Secretary, Mysore State Life Insurance Committee,
Bangalore.

To

S. SHAMANNA, Esq., B.A.,
Financial Secretary to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

SIR,

406 Secl Dev 13/8

In continuation of this office letter No. 18538 dated 5-4-34 and with reference to the Memo No. D 5373 dated 8-5-34 of the Secretary to Government Development Department, forwarding a copy of his letter No.D5372 dated 8-5-34 addressed to the Registrar of Joint Stock Companies in Mysore, Bangalore., in the matter of the change in name of " THE MYSORE INSURANCE CO.LTD., BANGALORE., ", I have the honor to request that a decision in the matter may kindly be ordered to be expedited.

I have the honor to be,
Sir
Your most obedient servant,

G Raghava Rao
FOR SECRETARY,
INSURANCE COMMITTEE.

The case is being dealt with in the Dev. Br.
This is therefore transferred thither for needful action
MW
13/8

Dev Br
KS/
7/8

SEC. & REV. SECRETARIAT
14 AUG. 1934
DEVELOPMENT BRANCH

Subd
The file has been sent unofficially to the Secy to Govt
today
MD CB

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P6595 Gen Rev

Dated, Bangalore, 1st April 1936.

4

From

General
The/ *Secretary to the Government of His Highness the Maharaja of Mysore,*
Development Department.

To

The Director of Industries and Commerce in Mysore,

Bangalore.

Sir,

With reference to the correspondence ending with your Un-official No. D2.154/34-35 regarding the use of the word "Mysore" by the manufacturers of "Mysore Herbal Soap" I am directed to state that action similar to that taken in the case of Elephant Soap Works Mysore may be taken now and the attention of the manufacturers of the "Mysore Herbal Soap" drawn to the infringement Committed. They may also be informed that the Elephant Soap works dropped the use of the word "Mysore" in connection with their products when it was pointed out to them by Government that it was an infringement of their trade name.

The file of papers relating to your office is herewith returned.

I have the honour to be,

Sir,

Your most obedient servant,

pp

for General Secretary to Government.

(14

Appendix F G—1]

SUBJECT.....

.....

.....

Section Law

File No. 202-34

Serial No. V

No. P 6595/Exc Rec

Diary No. of letter replied to.....

To

The Dist of Dsc

General and Revenue Secretariat

( )

the *193*

Sir,

Date of issue 4/4/35

With reference to the correspondence ending with your U.O. No. D2. ~~Copies~~ 154/34-35 re: the use of the word "Mysore" by the manufacturers of "Mysore Herbal Soap" I am directed to state that ~~similar~~ Similar to action as in that taken in the case of Elephant Soap works, Mysore may be taken now and the attention of the manufacturers of the 'Mysore Herbal Soap' may be drawn to ~~the matter and the~~ the infringement committed ~~of the trade name~~. They may also be informed that the

Signed by

List of enclosures.....

Copied by

Examined by.....

Elephant Soap Works objected to
use of the word 'Elsie' in connection
with their products when it was pointed
out to them by you that it was
an infringement of their trade name.

You are the sole of
papers relating to your office is
herewith returned.

I have the
honour to be Gentlemen
Your obedient
Servant
ISD
25/3.